

Message Text

PAGE 01 NATO 04148 051940Z

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ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 PM-07 INR-10 L-03 NEA-10

NSAE-00 PA-03 RSC-01 PRS-01 USIA-15 TRSE-00 MBFR-04

SAJ-01 ACDA-19 SS-15 NSC-10 DODE-00 DRC-01 /126 W

----- 013675

R 051800Z SEP 73

FM USMISSION NATO

TO SECSTATE WASHDC 1418

INFO AMEMBASSY VIENNA

C O N F I D E N T I A L USNATO 4148

E.O. 11652: GDS, 12-31-79

TAGS: PARM, NATO

SUBJECT: MBFR: PRIVILEGES AND IMMUNITIES

UK DELEGATION HAS JUST CIRCULATED ADDITIONAL VIEWS ON
PRIVILEGES AND IMMUNITIES IN VIENNA, PARTICULARLY AS THEY
SHOULD APPLY TO STAFF SUPPORT PERSONNEL, ACTION REQUESTES:
DEPARTMENT COMMENTS ON BRITISH PAPER.

BEGIN TEXT:

MBFR NEGOTIATIONS: PRIVILEGES AND IMMUNITIES

IT HAS BEEN AGREED IN THE SENIOR POLITICAL COMMITTEE THAT
MEMBERS OF THE NATO INTERNATIONAL SECRETARIAT ON DUTY IN VIENNA
IN CONNECTION WITH THE MBFR TALKS SHOULD BE ATTACHED TO THE STAFF
ON NATIONAL ALLIED EMBASSIES THERE.

2. AS YOU KNOW MY AUTHORITIES WERE NOT HAPPY ABOUT THIS IDEA AND
HABE ACCEPTED IT ONLY WITH SOME MISGIVINGS. THE FOREIGN AND
COMMONWEALTH OFFICE LEGAL ADVISERS HAVE WARNED THAT SUCH A
PROPOSAL WOULD BE STRICTLY SPEAKING CONTRARY TO THE VIENNA
CONVENTION ON DIPLOMATIC RELATIONS AS THE PERSONNEL OF THE NATO
SECRETARIAT AND OTHER NATO STAFF WOULD NOT BE PERFORMING ANY
OF THE FUNCTIONS OF A NATIONAL DIPLOMATIC MISSION. THE PROPOSED
ARRANGEMENT THEREFORE IS ONE WHICH MIGHT NOT STAND UP IN THE
AUSTRIAN COURTS SHOULD A MEMBER OF NATO'S STAFF ATTACHED TO THE
BRITISH (OR ANY OTHER ALLIED) EMBASSY FIND HIMSELF OR HERSELF
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PAGE 02 NATO 04148 051940Z

IN TROUBLE AND AS SUCH IT MIGHT BRING INTO DISREPUTE THE PRACTICE
OF DIPLOMATIC STATUS, THE DIPLOMATIC COMMUNITY IN VIENNA AND,
IN PARTICULAR, THE EMBASSY IN QUESTION. IT WOULD ALSO PUT THE

MEMBERS OF THE NATO INTERNATIONAL SECRETARIAT IN A FALSE POSITION SINCE THEIR IMMUNITIES WOULD BE THEORETICAL AND NOT ACTUAL: THERE IS NO POINT IN MAKING ELABORATE ARRANGEMENTS TO GIVE PEOPLE IMMUNITY IF THEY DO NOT WORK WHEN PUT TO THE TEST.

3. IF THEREFORE IT IS ESSENTIAL FOR MEMBERS OF THE NATO INTERNATIONAL SECRETARIAT TO HAVE PRIVILEGES AND IMMUNITIES AND IF THE AUSTRIAN GOVERNMENT CANNOT, OR WILL NOT, PASS THE NECESSARY LEGISLATION TO THIS EFFECT, MY AUTHORITIES COULD ACCEPT THE ATTACHMENT OF NATO INTERNATIONAL SECRETARIAT TO THE BRITISH EMBASSY IN VIENNA PROVIDED THAT:

A. THE AUSTRIAN GOVERNMENT CONFIRM THAT IF A BRITISH MEMBER OF THE NATO INTERNATIONAL SECRETARIAT IS ATTACHED, WITH THE CONSENT OF THE AUSTRIAN GOVERNMENT, TO OUR EMBASSY IN VIENNA, AN AUSTRIAN COURT WILL BE BOUND TO ACCEPT THAT PERSON AS A MEMBER OF THE STAFF OF THE EMBASSY FOR THE PURPOSE OF THE VIENNA CONVENTION (IT IS WORTH NOTING THAT SUCH WOULD NOT BE THE CASE IN A PARALLEL SITUATION IN THE UNITED KINGDOM);

B. WE MAKE IT CLEAR TO THE AUSTRIAN GOVERNMENT THAT WE ARE TAKING THIS EXCEPTIONAL STEP ONLY BECAUSE THEY HAVE ASKED US TO AND THAT IT DOES NOT CONSTITUTE A PRECEDENT.

4. THE ABOVE CONSIDERATIONS RELATE TO THE ATTACHMENT OF THOSE SENIOR NATO PERSONNEL WHO MIGHT APPROPRIATELY BE COVERED BY DIPLOMATIC STATUS. THERE REMAINS THE QUESTION OF ADMINISTRATIVE AND TECHNICAL STAFF: WE WOULD NOT BE ABLE TO ASK THAT THESE STAFF ALSO SHOULD BE GIVEN DIPLOMATIC STATUS SINCE THERE WILL BE A NUMBER OF STAFF IN OUR OWN DELEGATION TO THE NEGOTIATIONS FOR WHOM WE SHALL EQUALLY NOT BE MAKING SUCH A REQUEST. I UNDERSTAND THAT IT HAS BEEN INDICATED BY THE AUSTRIANS TO THE BELGIAN AUTHORITIES THAT IT WOULD NOT BE NECESSARY TO INCLUDE SUCH ADMINISTRATIVE AND TECHNICAL NATO STAFF ON NATIONAL LISTS SINCE THEY WOULD IN ANY CASE BE GIVEN PROPER PROTECTION. IN THIS CASE TOO WE WOULD NEED AN ASSURANCE FROM THE AUSTRIAN AUTHORITIES, CONFIDENTIAL
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PAGE 03 NATO 04148 051940Z

SIMILAR TO THAT IN PARAGRAPH 3A. ABOVE THAT ANY SUCH STAFF ATTACHED TO THE BRITISH EMBASSY WOULD BE REGARDED BY THE AUSTRIAN COURTS AS CARRYING OUT THE DUTIES OF THE EMBASSY FOR THE PURPOSES OF THE VIENNA CONVENTION.

5. MY AUTHORITIES BELIEVE THAT THE WAY TO OBTAIN SUCH ASSURANCES FROM THE AUSTRIAN GOVERNMENT WILL BE FOR EACH COUNTRY INDIVIDUALLY TO SEEK THEM, EITHER INFORMALLY OR BY MEANS OF A FORMAL NOTE. BUT THIS IS A POINT ON WHICH WE HAVE NO FIXED VIEW AND WOULD WELCOME THE COMMENTS OF OUR ALLIES.

6. AS HAS BEEN MADE CLEAR IN THE SENIOR POLITICAL COMMITTEE, MY AUTHORITIES ARE IN FAVOUR OF A FORMAL EXCHANGE OF LETTERS BETWEEN THE SECRETARY GENERAL AND THE UNITED KINGDOM PERMANENT REPRESENTATIVE TO COVER THE ATTACHMENT OF NATO STAFF TO THE BRITISH EMBASSY IN VIENNA. OUR OWN LETTER WILL CONTAIN A STIPULATION THAT HM AMBASSADOR IN VIENNA WOULD HAVE THE ULTIMATE AUTHORITY OVER ALL ATTACHED NATO STAFF, INCLUDING THE RIGHT IF NECESSARY TO WAIVE ANY IMMUNITY WHICH THEY MIGHT POSSESS. HE WOULD ALSO RESERVE THE RIGHT TO ASK ANY NATO OFFICE TO LEAVE HIS STAFF IF THE OCCASION SO DEMANDED. THE NATO OFFICERS CONCERNED WOULD OF COURSE NOT BE FORMALLY SECONDED TO HM DIPLOMATIC SERVICE NOR COULD OUR EMBASSY IN VIENNA UNDERTAKE ANY ADMINISTRATIVE RESPONSIBILITIES FOR THEM

7. MY AUTHORITIES WOULD BE GRATEFUL TO KNOW IN DUE COURSE THE NAMES AND RANKS OF THOSE NATO STAFF, BOTH MILITARY AND CIVILIAN, WHO MIGHT BE ATTACHED TO HM EMBASSY DURING THE COURSE OF THE NEGOTIATIONS. IN THIS CONNECTION MY AUTHORITIES WISH TO POINT OUT THAT OUR OWN DELEGATION TO THE NEGOTIATIONS WILL PROBABLE NUMBER ONLY SEVEN DIPLOMATIC STAFF AND SIX TECHNICAL AND ADMINISTRATIVE STAFF. WE WOULD NOT EXPECT ADDITIONAL OFFICERS FROM NATO TO EXCEED THIS TOTAL.
END TEXT
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Message Attributes

Automatic Decaptioning: X
Capture Date: 15 APR 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 05 SEP 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: boyleja
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973USNATO04148
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: 11652 GDS, 12-31-79
Errors: n/a
Film Number: n/a
From: USNATO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730965/dcfcnad.tel
Line Count: 136
Locator: TEXT ON-LINE
Office: n/a
Original Classification: SECRETARIAT
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: SECRETARIAT <gwr 19990430 text of telegram is confidential>; CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: boyleja
Review Comment: n/a
Review Content Flags:
Review Date: 14 AUG 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <14-Aug-2001 by garlanwa>; APPROVED <21-Sep-2001 by boyleja>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> gwr 19990430
Subject: MBFR: PRIVILEGES AND IMMUNITIES
TAGS: PARM, NATO
To: STATE INFO VIENNA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005